

AMENDED IN ASSEMBLY APRIL 9, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 831**

**Introduced by Assembly Member Goldberg**

February 20, 2003

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An act to amend Sections 715.010, 715.020, and 1167 of, and to add Sections 715.060 and 918.7 to, the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 831, as amended, Goldberg. Unlawful detainer.

(1) Existing law sets a 5-day period for a tenant to vacate the premises or oppose a writ of possession of real property, in favor of the landlord, prior to eviction. Existing law also sets a 5-day period, including Saturdays and Sundays but excluding other judicial holidays, for response to a summons for summary proceeding for obtaining possession of real property.

This bill would change those periods from 5 days to 10 days, ~~and specify that those periods exclude judicial holidays~~. The bill would also require a court to restore to possession a tenant who has been evicted pursuant to these provisions in violation of an order of that court.

(2) Existing law permits a court, upon terms as may be just, to relieve a party from a judgment, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect, and prescribes a specified application process for this relief. In the case of a proceeding to determine the right to possession of real property, this application must be made within 6 months, except as specified. Existing law permits a court in its discretion to stay the

enforce of a judgment or an order if the judgment debtor has another action pending on a disputed claim against the creditor.

This bill would require a court to restore a defendant in an unlawful detainer action to possession who has been displaced pursuant to a writ for possession executed as the result of fraud, mistake, clerical mistake, inadvertence, accident, surprise, or excusable neglect.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 715.010 of the Code of Civil Procedure  
2 is amended to read:

3 715.010. (a) A judgment for possession of real property may  
4 be enforced by a writ of possession of real property issued pursuant  
5 to Section 712.010. The application for the writ shall provide a  
6 place to indicate that the writ applies to all tenants, subtenants, if  
7 any, name claimants, if any, and any other occupants of the  
8 premises.

9 (b) In addition to the information required by Section 712.020,  
10 the writ of possession of real property shall contain the following:

11 (1) A description of the real property, possession of which is to  
12 be delivered to the judgment creditor in satisfaction of the  
13 judgment.

14 (2) A statement that if the real property is not vacated within 10  
15 days from the date of service of a copy of the writ on the occupant,  
16 ~~excluding judicial holidays, or~~ or if the copy of the writ is posted,  
17 within 10 days from the date a copy of the writ is served on the  
18 judgment debtor, ~~excluding judicial holidays~~, the levying officer  
19 will remove the occupants from the real property and place the  
20 judgment creditor in possession.

21 (3) A statement that any personal property, except a  
22 mobilehome, remaining on the real property after the judgment  
23 creditor has been placed in possession will be sold or otherwise  
24 disposed of in accordance with Section 1174 of the Code of Civil  
25 Procedure unless the judgment debtor or other owner pays the  
26 judgment creditor the reasonable cost of storage and takes  
27 possession of the personal property not later than 15 days after the  
28 time the judgment creditor takes possession of the real property.



1 (4) The date the complaint was filed in the action which  
2 resulted in the judgment of possession.

3 (5) The date or dates on which the court will hear objections to  
4 enforcement of a judgment of possession that are filed pursuant to  
5 Section 1174.3, unless a summons, complaint, and prejudgment  
6 claim of right to possession were served upon the occupants in  
7 accordance with Section 415.46.

8 (6) The daily rental value of the property as of the date the  
9 complaint for unlawful detainer was filed unless a summons,  
10 complaint, and prejudgment claim of right of possession were  
11 served upon the occupants in accordance with Section 415.46.

12 (7) If a summons, complaint, and prejudgment claim of right  
13 to possession were served upon the occupants in accordance with  
14 Section 415.46, a statement that the writ applies to all tenants,  
15 subtenants, if any, named claimants, if any, and any other  
16 occupants of the premises.

17 (c) At the time the writ of possession is served or posted, the  
18 levying officer shall also serve or post a copy of the form for a  
19 claim of right to possession, unless a summons, complaint, and  
20 prejudgment claim of right to possession were served upon the  
21 occupants in accordance with Section 415.46.

22 SEC. 2. Section 715.020 of the Code of Civil Procedure is  
23 amended to read:

24 715.020. To execute the writ of possession of real property:

25 (a) The levying officer shall serve a copy of the writ of  
26 possession on one occupant of the property. Service on the  
27 occupant shall be made by leaving the copy of the writ with the  
28 occupant personally or, in the occupant's absence, with a person  
29 of suitable age and discretion found upon the property when  
30 service is attempted who is either an employee or agent of the  
31 occupant or a member of the occupant's household.

32 (b) If unable to serve an occupant described in subdivision (a)  
33 at the time service is attempted, the levying officer shall execute  
34 the writ of possession by posting a copy of the writ in a  
35 conspicuous place on the property and serving a copy of the writ  
36 of possession on the judgment debtor. Service shall be made  
37 personally or by mail. If the judgment debtor's address is not  
38 known, the copy of the writ may be served by mailing it to the  
39 address of the property.

(c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within 10 days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), ~~excluding judicial holidays~~, the levying officer shall remove the occupants from the property and place the judgment creditor in possession. The provisions of Section 684.120 extending time do not apply to the 10-day period specified in this subdivision.

(d) Notwithstanding subdivision (c), unless the person is named in the writ, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action. However, if the summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, no occupant of the premises, whether or not the occupant is named in the judgment for possession, may object to the enforcement of the judgment as prescribed in Section 1174.3.

SEC. 3. Section 715.060 is added to the Code of Civil Procedure, to read:

715.060. A court shall restore to possession a tenant who has been evicted from the premises pursuant to this chapter in violation of an order of that court.

~~SEC. 4. Section 1167 of the Code of Civil Procedure is amended to read:~~

~~1167. The summons shall be in the form specified in Section 412.20 except that when the defendant is served, the defendant's response shall be filed within 10 days, excluding judicial holidays, after the complaint is served upon him or her.~~

~~In all other respects the summons shall be issued and served and returned in the same manner as a summons in a civil action.~~

SEC. 4. *Section 1167 of the Code of Civil Procedure is amended to read:*

1167. The summons shall be in the form specified in Section 412.20 except that when the defendant is served, the defendant's response shall be filed within ~~five~~ 10 days, including Saturdays and Sundays but excluding all other judicial holidays, after the complaint is served upon him or her. If the last day for filing the

1 response falls on a Saturday or Sunday, the response period shall  
2 be extended to and including the next court day.

3 In all other respects the summons shall be issued and served and  
4 returned in the same manner as a summons in a civil action.

5 SEC. 5. Section 918.7 is added to the Code of Civil Procedure,  
6 to read:

7 918.7. The trial court shall restore a defendant in an unlawful  
8 detainer action to possession who has been displaced pursuant to  
9 a writ for possession executed as the result of fraud, mistake,  
10 clerical mistake, inadvertence, accident, surprise, or excusable  
11 neglect.

